Remarks

After entry of this amendment, claims 35-49 will be pending, with claim 35 being independent. Claims 35-37 are currently amended, and claims 38-49 are newly presented. No new matter is introduced by these amendments.

Interview Summary

Applicant thanks the Examiner and the Examiner's supervisor for their time during an in-person interview on February 14, 2011. During the interview, the prior art cited in the November 18, 2010 Office action was discussed (including the prior art status of Tsutsui, discussed further below) along with possible amendments. The claims have been amended to take into consideration the comments and suggestions made by the Examiner and the Examiner's supervisor at the interview.

Prior Art Status of Tsutsui

Claims 35-37 were rejected as allegedly obvious in view of U.S. Patent No. 6,963,860 (Tsutsui). Applicant traverses this rejection and respectfully request that it be withdrawn.

Applicant submits herewith a Declaration Under 37 CFR § 1.131, which establishes that the Applicant, Mr. Michael Sharp, reduced the invention to practice before the U.S. filing date of Tsutsui. As shown in the Declaration and accompanying exhibits, the Applicant's prior conception and reduction to practice before the August 12, 1999 U.S. filing date of Tsutsui is evidenced by (1) a newspaper article dated March 18, 1999 and (2) a newspaper article dated November 12, 1999, which indicates that the claimed invention was reduced to practice at least as early as February 1999. Because the subject matter claimed in the present applieation was conceived and reduced to practice by Applicant before the U.S. filing date of the Tsutsui reference, Tsutsui does not qualify as prior art under 35 U.S.C. § 102(e).

35 U.S.C. § 102(b) and (e) Rejection of Claims 35-37 in view of Willbanks

Claims 35-37 were rejected as allegedly anticipated by U.S. Patent No. 5,703,995 to Willbanks (Willbanks). Applicant traverses this rejection and respectfully request that it be withdrawn.

Independent claim 35, as amended, is directed to a method of combining at least two audio files containing media into a single combined audio file. The method comprises receiving a first audio file that contains advertising content from a first party, receiving a second audio file that includes non-advertising content from a second party, and creating a combined audio file from the first and second audio files. The combined audio file is a single digital file that includes the advertising content of the first audio file and the non-advertising content of the second audio file.

The combined audio file is made accessible for download to a plurality of users via a computer network. The combined audio file is transmitted to at least one device where the entire combined audio file is saved for later playback. A *payment is received from the first party* for inclusion of the first audio file with the combined audio file, and *at least a portion of the payment is distributed as a royalty payment to the second party* for the inclusion of the second audio file with the combined audio file. Moreover, the combined audio file is made accessible for download *free of charge* by the plurality of users.

Willbanks is directed to a system for mass-producing customized video and audio recordings onto pre-duplicated videotapes at a common insert location. Applicant respectfully submits that Willbanks does not teach or suggest making a combined audio file available for download in the manner recited in claim 35. Nor does Willbanks teach or suggest the novel method of making a combined audio file accessible for download free of charge, receiving a payment from a first party (which is associated with the first file), and distributing at least a portion of the payment to a second party (which is associated with the second file).

Accordingly, Applicant respectfully submits that claim 35 is allowable over the cited reference. Claims 36-49 depend from independent claim 35 and are, therefore, allowable for at least the same reasons discussed above with respect to claim 35. Moreover, each of claims 36-49 recites additional features and is believed allowable over the cited reference in its own right.

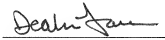
Conclusion

The present application is in condition for allowance and such action is respectfully requested. If any issues remain concerning this application, the Examiner is invited to contact the undersigned attorney.

Respectfully submitted,

KLARQUIST SPARKMAN, LLP

One World Trade Center, Suite 1600
121 S.W. Salmon Street
Portland, Oregon 97204
Telephone: (503) 595-5300
Facsimile: (503) 595-5301

By 

Deakin T. Lauer
Registration No. 47,735